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No. 94-1326

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

CENTER FOR AUTO SAFETY,
Petitioner,

v.

TYRAS ATHEY, Secretary of State of Maryland,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF OF THE FREE SPEECH COALITION, INC. AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF THE FREE SPEECH COALITION . . . 1

STATEMENT OF FACTS 3

SUMMARY OF ARGUMENT 4

ARGUMENT 4

I. The Cumulative Effect of Charitable Solicitation Registration Fees Creates an Unconstitutional Burden Upon Charitable Organizations. 4

A. Registration Fees are Presently Required in most States. 5

B. Counties, Cities and Other Political Subdivisions Also Impose Charitable Solicitation Regulations and Exact Fees, and More Would Be Encouraged To Do So by the Decisions Below. 8

C. The Maryland Statute Imposes a Tax, Not a User Fee; Even if it Were Found to be a Nondiscriminatory User Fee it Improperly Burdens Interstate Commerce by its Cumulative Effect Which Far Outweighs Any Benefit to the Local Community. 10

II. By Deterring the Solicitation of Funds, Regulatory Fees Chill the Dissemination of Constitutionally Protected Speech and Ideas to the Public in Violation of the First Amendment. 11

A. The Statute Places an Unconstitutional Economic Barrier to the Dissemination of Ideas in Maryland. 11

B. The Statute Also Unduly Restricts a Wide Range of Organizations Engaged in Political Speech. 14

CONCLUSION 15

TABLE OF AUTHORITIES

Cases

Page

Cent. Fla. Nuclear Freeze Campaign v. Walsh, ... 13
774 F.2d 1515 (11th Cir. 1985), cert. denied,
475 U.S. 1120 (1986)

Complete Auto Transit, Inc. v. Brady, ... 10
430 U.S. 274 (1977)

Cox v. New Hampshire, 312 U.S. 569 (1941) 13

Forsyth County, Ga. v. Nationalist Movement, ... 13
112 S.Ct. 2395 (1992)

Holloway v. Brown, 403 N.E.2d 191 (Ohio 1980) 8

National Bellas Hess v. Department of Revenue, ... 9
386 U.S. 753 (1967)

Oregon Waste Systems v. Environmental Dept., ... 11
114 S.Ct. 1345 (1994)

Pike v. Bruce Church, Inc., 397 U.S. 137 (1970) 11

Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992) . . 10

Riley v. National Fed'n. of the Blind, ... 15
487 U.S. 781 (1988)

Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980) 12, 15

Other

Gelfand, State & Loc. Govt. Debt Fin. §10:13 p.44 (1990) 9

Kalapa, Lowell, "Hawaii: Lawmakers Opt for Fees in 1994; Slow Tourism Growth Sets Agenda For '95", *State Tax Notes*, p.12, Jan. 2, 1995. 9

Nowak, Rotunda & Young, Constitutional Law, §16.7, p.837 (West, 3rd ed. 1986) 2

Sunstein, Cass, The Partial Constitution, p.238 (1994). 12

STATUTES

Alaska Stat. §45-68.010 et seq. (1994) 5
Ariz. Rev. Stat. Ann. §44-6551 et seq. (1992) 5
Ark. Code Ann. §4-28-401 et seq. (Michie 1991) 5
Cal. Bus. & Prof. Code §17510 et seq. (Deering 1993) 5
Chicago Municipal Code Handbook, Art. II, §10-8-080 et seq. (1994) 8
C.R.S. §6-16-101 et seq. (1994) 5, 7
Columbus City Code §525.01 et. seq. (1989) 8
C.G.S.A. §21a-175 et seq. (West 1994) 5, 7
D.C. Code Ann. §2701 et. seq. (1994) 6, 8
F.S.A. §496.401 et seq. (West Supp. 1995) 5, 7, 8
Ga. Code Ann. §43-17-1 et seq. (Michie 1994) 5, 7

H.R.S.A. §467B et seq. (1993) 5, 7
Idaho Code § 48-1201 et seq. (1993) 5
225 I.L.C.S. 460/1 et seq. (1993) 5
Indiana Code §36-8-2-11 (1993) 8
Iowa Code Ann. §13C.1 et seq. (West Supp. 1994) 5
K.S.A. §17.1759 et seq. (1993 Cumulative Supp.) . . 5, 7
K.R.S. §367.650 et seq. (1994) 6
Los Angeles Municipal Code, Ch. IV, Art. 4, ... 8
§44.00 et. seq. (1936, as amended)
Los Angeles County Code §7.24.160 et. seq. 8
(1994)
Me. Rev. Stat. Ann. tit.9 §5001 et seq. 6, 7
(West 1994)
MD. Bus. Reg. Code Ann. §6-101 et seq. . . . 3, 6, 7, 14
(1994)
M.G.L.A. Ch.68 §18 et seq. 6, 7, 8
(West Supp. 1994)
Mich. Comp. Laws Ann. §400.271 et seq. 6
(West 1994)
Minn. Stat. Ann. §309.50 et seq. 6, 7
(West Supp. 1995)
Miss. Code Ann. §79-11-501 et seq. 6, 7
(1994 Supp.)
R.S.Mo. Supp. §407.450 et seq. (1993) 6, 7
Neb. Rev. Stat. §28-1401 et seq. (1994) 6, 7
N.H. Rev. Stat. Ann. §7:19 et seq. (1993) 6, 7
N.J. Stat. Ann. §45:17A-1 et seq. (West 1994) 6, 7
N.Y. Exec. Law §171-a et seq. (West Supp. 1995) . . 6, 7
N.C.G.S. §131F-1 et seq. 6, 7
(1994 Cumulative Supp.)
N.D. Cent. Code §50-22-01 et seq. (1993) 6, 7

Ohio Rev. Code Ann. §1716.01 et seq. 6, 7
(Baldwin 1994)
Okla. Stat. Ann. tit. 18, §552.3 et seq. 6, 7
(West Supp. 1995)
O.R.S. 128.610 et seq. (1994 Supp.) 6, 7
10 P.S. §162.1 et seq. (1994 Supp.) 6, 7, 8
R.I. Gen. Laws §5-53-1 et seq. (1994) 6, 7
S.C. Code Ann. §33-55-10 et seq. 6, 7
(1993 Cumulative Supp.)
T.C.A. §48-3-501 et seq. (1994 Supp.) 6, 7
Utah Code Ann. §13-22-1 et seq. 6, 7
(Cumulative Supp. 1994)
Code of Virginia §57-48 et seq. 6, 7, 8
(1994 Supp.)
Wash. Rev. Code Ann. §19.09 et seq. (West 1993) 6
W.Va. Code §29-19-1 et seq. 6, 7
(1994 Cumulative Supp.)
Wis. Stat. Ann. §440.41 et seq. (West 1994) 6, 7

INTEREST OF THE FREE SPEECH COALITION, INC.

This amicus curiae brief is submitted on behalf of the Free Speech Coalition, Inc. (hereinafter the "Coalition") in support of the position advocated by the Petitioner. The Coalition, as amicus curiae, urges that this Court grant the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit, to review the Fourth Circuit's judgment which upheld Maryland's charitable solicitation law requiring charitable organizations to pay an annual registration fee based on their level of receipts from world-wide solicitation activities. This brief is being submitted in accordance with Sup. Ct. R. 37 (1990). Both parties consented in writing to the filing of this brief.

The Coalition is a nonprofit social welfare organization incorporated under the laws of the State of Maryland, whose tax-exempt status as an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 ("Code") has been recognized by the Internal Revenue Service. The purposes of the Coalition include protection of human and civil rights secured by law, such as the right of free speech at issue in this litigation, study and research related to such rights, and publication of papers designed to educate its members, the public, and government officials concerning such rights. The Coalition's 70 members include Code §501(c)(3) and other 501(c)(4) groups engaged in public advocacy and education.

The Coalition believes that the issues of free speech and the right to effectively petition government presented to this Court in this case are of special importance to the

nation, affecting not only the Petitioner, the Coalition, and its members, but also millions of citizens and organizations nationwide. The Coalition observes that this burdensome registration fee, especially when viewed in combination with similar fee-imposing provisions in other state charitable solicitation statutes throughout the country, has a most deleterious impact upon the First Amendment activities and other constitutionally-protected rights of nonprofit organizations and their members.[1]

The Coalition's view of the problems raised by State regulation may be somewhat wider than that of Petitioner in this case, and it is this broader perspective that makes submission of an amicus curiae brief helpful to the Court. The Coalition believes that the issue of the statute's constitutionality was decided wrongly by the District Court and the Court of Appeals, and seeks to apprise this Court further of the potential impact of the Fourth Circuit's ruling on other nonprofit organizations and citizens throughout the United States.

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[1] The Coalition submits that there are few more important questions for a democracy than the restrictions which it allows on social and political speech:

> Unlike economic legislation, which is only a product of the political process, and, therefore may to some extent be subject to an inner political check, speech is part of the legislative process itself; restriction of speech alters the democratic process and undercuts the basis for deferring to the legislation which emerges. Additionally, the restraint of speech may often be seen as a short range aid to societal programs by insulating the current government from criticism caused by debate. This natural tendency conflicts with the first amendment value of open debate. [Nowak, Rotunda & Young, Constitutional Law, §16.7, 837 (West, 3rd ed. 1986).]

STATEMENT OF FACTS

Maryland's Charitable Organizations Solicitation Law requires every charity to file a registration statement with the Secretary of State before it solicits funds in the State, and thereafter to file annual reports. Additionally, since 1989, charities have been required to pay an annual registration fee based on their level of world-wide contributions. Charities receiving less than $25,000 world-wide pay nothing, those receiving between $25,000 and $50,000 pay an annual fee of $50, those receiving between $50,001 and $75,000 pay $75, those receiving $75,001 to $100,000 pay $100, and those receiving greater than $100,000 must pay $200.[2]

Petitioner, Center for Auto Safety ("CAS"), is an out-of-state charity which is tax exempt pursuant to Code §501(c)(3), and whose world-wide contributions place it within Maryland's highest registration fee bracket. CAS is a consumer advocacy organization formed "to give consumers a national voice in the struggle for improved automobile safety, efficiency, and quality".[3] CAS's activities include "researching automotive safety issues, testifying at public hearings, filing administrative petitions, providing information through the media, and distributing books and other publications".[4]

CAS sends out two types of direct mailings, both of which combine an educational message with a request for funds. It sends out "prospect mail" which contains

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[2] MD Bus. Reg. Code Ann. §6-407 (1994) (formerly Annotated Code of Maryland, Art.41, §3-202(g)).

[3] Petition for a Writ of Certiorari at 6.

[4] Id.

"information about a variety of automobile safety issues."[5] And it engages in "direct-mail outreach to its existing members," sending them "information about CAS's programs and urging them to renew their memberships."[6] About 6% of CAS's members live in Maryland, and its annual contributions from Maryland have never exceeded $16,000.[7]

CAS refused to pay the $200 annual fee for its solicitations in 1991, and filed suit to challenge the legality of the underlying statute. Both the District Court for the Middle District of Maryland and the United States Court of Appeals for the Fourth Circuit upheld the statute against CAS's challenge and CAS seeks this Court's review of the appellate court decision.

SUMMARY OF ARGUMENT

The Statute imposes taxes which improperly burden interstate commerce and unconstitutionally deter political speech within Maryland. The cumulative effect of this and similar laws in other jurisdictions will be to discourage the exchange of ideas among new and small organizations, their members and the public.

ARGUMENT

I. The Cumulative Effect of Charitable Solicitation Registration Fees Creates an Unconstitutional Burden Upon Charitable Organizations.

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[5] Id.

[6] Brief for Appellant, on Appeal to the United States Court of Appeals for the Fourth Circuit, p.6.

[7] Id.

A. Registration Fees are Presently Required in Most States.

Although a $200 fee may not seem unduly burdensome to a corporation that receives annual charitable contributions in excess of $100,000, its true impact can only be measured when viewed together with fees other jurisdictions impose, now and in the future. In its Petition, Petitioner notes that

> While a $200 fee may not, in and of itself, seem like a substantial barrier to the solicitation of funds, other States are now basing their fees on nationwide public contributions. If every state established a fee system identical to Maryland's, then CAS would have to pay $10,000 annually for the right to engage in the fundraising that is the lifeblood of its advocacy.[8]

Even this statement underemphasizes the impact such fees may already have on solicitations by charitable organizations. Annual registration is presently required of "charitable organizations" in at least 39 States.[9] Some form

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[8] Petition for a Writ of Certiorari, at 7.

[9] The following States have enacted statutory regulation of charitable solicitation: Alaska, *see* Alaska Stat. §45-68.010 et seq. (1994); Arizona, *see* Ariz. Rev. Stat. Ann. §44-6551 et seq. (1992); Arkansas, *see* Ark. Code Ann. §4-28-401 et seq. (Michie 1991); California, *see* Cal. Bus. & Prof. Code §17510 et seq. (Deering 1993); Colorado, *see* C.R.S. §6-16-101 et seq. (1994); Connecticut, *see* C.G.S.A. §21a-175 et seq. (West 1994); Florida, *see* F.S.A. §496.401 et seq. (West Supp. 1995); Georgia, *see* Ga. Code Ann. §43-17-1 et seq. (Michie 1994); Hawaii, *see* H.R.S.A. §467B et seq. (1993); Idaho, *see* Idaho Code § 48-1201 et seq. (1993); Illinois, *see* 225 I.L.C.S. 460/1 et seq. (1993); Iowa, *see* Iowa Code Ann. §13C.1 et seq. (West Supp. 1994); Kansas, *see* K.S.A. §17.1759 et seq. (1993 Cumulative Supp.); Kentucky, *see*

[9] Continued...K.R.S. §367.650 et seq. (1994); Maine, *see* Me. Rev. Stat. Ann. tit.9 §5001 et seq. (West 1994); Maryland, *see* MD. Bus. Reg. Code Ann. §6-101 et seq. (1994); Massachusetts, *see* M.G.L.A. Ch.68 §18 et seq. (West Supp. 1994); Michigan, *see* Mich. Comp. Laws Ann. §400.271 et seq. (West 1994); Minnesota, *see* Minn. Stat. Ann. §309.50 et seq. (West Supp. 1995); Mississippi, *see* Miss. Code Ann. §79-11-501 et seq. (1994 Supp.); Missouri, *see* R.S.Mo. Supp. §407.450 et seq. (1993); Nebraska, *see* Neb. Rev. Stat. §28-1401 et seq. (1994); New Hampshire, *see* N.H. Rev. Stat. Ann. §7:19 et seq. (1993); New Jersey, *see* N.J. Stat. Ann. §45:17A-1 et seq. (West 1994); New York, *see* N.Y. Exec. Law §171-a et seq. (West Supp. 1995); North Carolina, *see* N.C.G.S. §131F-1 et seq. (1994 Cumulative Supp.); North Dakota, *see* N.D. Cent. Code §50-22-01 et seq. (1993); Ohio, *see* Ohio Rev. Code Ann. §1716.01 et seq. (Baldwin 1994); Oklahoma, *see* Okla. Stat. Ann. tit. 18, §552.3 et seq. (West Supp. 1995); Oregon, *see* O.R.S. 128.610 et seq. (1994 Supp.); Pennsylvania, *see* 10 P.S. §162.1 et seq. (1994 Supp.); Rhode Island, *see* R.I. Gen. Laws §5-53-1 et seq. (1994); South Carolina, *see* S.C. Code Ann. §33-55-10 et seq. (1993 Cumulative Supp.); Tennessee, *see* T.C.A. §48-3-501 et seq. (1994 Supp.); Utah, *see* Utah Code Ann. §13-22-1 et seq. (Cumulative Supp. 1994); Virginia, *see* Code of Virginia §57-48 et seq. (1994 Supp.); Washington, *see* Wash. Rev. Code Ann. §19.09 et seq. (West 1993); West Virginia, *see* W.Va. Code §29-19-1 et seq. (1994 Cumulative Supp.); Wisconsin, *see* Wis. Stat. Ann. §440.41 et seq. (West 1994). The District of Columbia also regulates charitable solicitation. *See* D.C. Code Ann. §2701 et. seq. (1994).

of monetary fee is imposed in at least 29 States.[10] Ten States, including Maryland, impose a sliding scale fee based on charitable contributions received.[11]

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[10] The following States statutorily have imposed some form of monetary registration fee for charities which solicit within their borders: Colorado, *see* C.R.S. §6-16-104 (3) (1994); Connecticut, *see* C.G.S.A. §21a-190b (West 1994); Florida, *see* F.S.A. §496.405(4)(a) (West Supp. 1995); Georgia, *see* Ga. Code Ann. §43-17-5(c) (Michie 1994); Hawaii, *see* H.R.S.A. §467B-2(e) (1993); Kansas, *see* K.S.A. §17.1763(e) (1993 Cumulative Supp.); Maine, *see* Me. Rev. Stat. Ann. tit.9 §5004 (2-A) (West 1994); Maryland, *see* MD. Bus. Reg. Code Ann. §6-407 (1994); Massachusetts, *see* M.G.L.A. Ch.12 §8F (West Supp. 1994); Minnesota, *see* Minn. Stat. Ann. §309.52 (Subd. 2) (West Supp. 1995); Mississippi, *see* Miss. Code Ann. §79-11-503(1) (1994 Supp.); Missouri, *see* R.S.Mo. Supp. §407.462 (1993); Nebraska, *see* Neb. Rev. Stat. §28-1401 (1994); New Hampshire, *see* N.H. Rev. Stat. Ann. §7:28-a (1993); New Jersey, *see* N.J. Stat. Ann. §45:17A-4(c) (West 1994); New York, *see* N.Y. Exec. Law §172(3) (West Supp. 1995); North Carolina, *see* N.C.G.S. §131F-8(a) (1994 Cumulative Supp.); North Dakota, *see* N.D. Cent. Code §50-22-02 (1993); Ohio, *see* Ohio Rev. Code Ann. §1716.02(D) (Baldwin 1994); Oklahoma, *see* Okla. Stat. Ann. tit. 18, §552.3 (West Supp. 1995); Oregon, *see* O.R.S. 128.670 (7)(a) (1994 Supp.); Pennsylvania, *see* 10 P.S. §162.5(p) (1994 Supp.); Rhode Island, *see* R.I. Gen. Laws §5-53-2(c) (1994); South Carolina, *see* S.C. Code Ann. §33-55-40(D) (1993 Cumulative Supp.); Tennessee, *see* T.C.A. §48-3-504(b) (1994 Supp.); Utah, *see* Utah Code Ann. §13-22-6(1)(a) (Cumulative Supp. 1994); Virginia, *see* Code of Virginia §57-49E (1994 Supp.); West Virginia, *see* W.Va. Code §29-19-5(d) (1994 Cumulative Supp.); Wisconsin, *see* Wis. Stat. Ann. §440.42(1)(b)(3) (West 1994).

[11] States in which fees vary based on the organizations' total receipts include Florida, *see* F.S.A. §496.405(4)(a) (West Supp. 1995), Maryland, *see* MD Bus. Reg. Code Ann. §6-407 [formerly Art. 41 §3-202(g)], Massachusetts, *see* M.G.L.A. Ch.12 §8F (West Supp. 1994), North Carolina, *see* N.C.G.S. §131F-8(a) (1994 Cumulative Supp.), Oregon, *see* O.R.S. 128.670 (7)(a) (1994 Supp.), Pennsylvania, *see* 10 P.S. §162.5(p) (1994 Supp.), Tennessee, *see* T.C.A. §48-3-504(b) (1994 Supp.), Virginia, *see* Code of Virginia §57-49(E) (1994 Supp.), and West Virginia, *see* W.Va. Code §29-19-5(d) (1994 Cumulative Supp.). In Ohio, fees vary based only on the level of contributions received in that state. *See* Ohio Rev. Code Ann. §1716.02(D) (Baldwin 1994).

It should also be noted that while Maryland's highest fee exceeds the fees presently charged by most States, it is not the highest.[12] There is no reason to expect either the number of States imposing fees or the level of the fees imposed to remain at the present level. A ruling for Respondent would likely encourage some States to raise their fees to the level now imposed by Maryland, and others to institute fees for the first time.

B. Counties, Cities and Other Political Subdivisions Also Impose Charitable Solicitation Regulations and Exact Fees, and More Would Be Encouraged To Do So by the Decisions Below.

Further, there is no reason the Court's concerns should be limited to the 50 States. Literally thousands of counties, cities, political subdivisions and municipalities could each enact charitable solicitation regulation and fee requirements of their own, as some now do.[13] If every State, county, city, political subdivision and municipality viewed itself as a protector of its citizens, on this issue, and imposed fee requirements identical to, if not exceeding, the fee requirements imposed on charitable organizations by

[12] Massachusetts and Pennsylvania each sport a top fee of $250. *See* M.G.L.A. Ch. 12 §8F (West Supp. 1994); 10 P.S. §162.5(p) (1994 Supp.). Virginia's heaviest fee is $325. *See* Code of Virginia §57-49 (E) (1994 Supp.). Florida's largest fee (for organizations with contributions of $10 million or more) has recently been raised to $400. *See* F.S.A. §496.405 (4)(a) (West Supp. 1995).

[13] A number of cities, counties and political subdivisions have already enacted charitable solicitation regulations. *See* Columbus City Code §525.01 et. seq. (1989); Los Angeles Municipal Code, Ch. IV, Art. 4, §44.00 et. seq. (1936, as amended); Los Angeles County Code §7.24.160 et. seq. (1994); Chicago Municipal Code Handbook, Art. II, §10-8-080 et. seq. (1994); D.C. Code Ann. §2701 et. seq. (1994). The Indiana Code expressly permits its subdivisions to regulate charitable solicitation. *See* Indiana Code §36-8-2-11 (1993). Cincinnati's charitable solicitation registration came under judicial scrutiny in Holloway v. Brown, 403 N.E. 2d 191 (Ohio 1980).

the Maryland statute, the costs imposed on the exercise of protected speech in this country would be astronomical.[14]

Such an argument of cumulative effect has been accepted by this Court in prior cases with respect to the Due Process and Commerce Clauses. As the Supreme Court said in striking down Illinois' use tax upon a mail order seller in National Bellas Hess v. Department of Revenue, 386 U.S. 753 (1967):

> [I]f the power of Illinois to impose use tax burdens upon National were upheld, the resulting impediments upon the free conduct of its interstate business would be neither imaginary nor remote. For if Illinois can impose such burdens, so can every other State, and so, indeed, can every municipality, every school district, and every other

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[14] Although licensing and registration fees are not purportedly the functional equivalent of taxation, there is a great incentive for jurisdictions to maximize such fees in the face of a recessed local economy, increased unemployment, and pressures on legislators to cut taxes. An example of this has occurred in Hawaii, where one commentator notes:

> The stagnant visitor industry and downturn in construction constrained tax revenue growth and government spending. Lawmakers lacked the will to increase the burden on Hawaii's taxpayers through direct tax increases in the face of rising unemployment. However, state departments and the Legislature took a less direct route to raising revenues by increasing or imposing a slew of license fees, user fees, and charges – and minor taxes disguised as fees.

Kalapa, Lowell, "Hawaii: Lawmakers Opt for Fees in 1994; Slow Tourism Growth Sets Agenda For '95," *State Tax Notes*, p.12, Jan. 2, 1995. *See also* Gelfand, State & Loc. Govt. Debt Fin. §10:13 p.44 (1990) which notes that "[s]ince user fees generally can be raised without a referendum and generally are not subject to a tax limit, financially pressed cities have often increased garbage, water, and other service charges as a means of raising revenues."

political subdivision throughout the Nation with power to impose sales and use taxes.[15]

Compliance with the bewildering array of existing regulations facing charitable organizations that mail interstate takes a tremendous amount of time and effort, in addition to the fees that must be paid. This effectively precludes new, smaller charitable organizations (which have fewer resources) from getting their message across.

C. The Maryland Statute Imposes a Tax, Not a User Fee; Even if it Were Found to be a Nondiscriminatory User Fee it Improperly Burdens Interstate Commerce by its Cumulative Effect Which Far Outweighs Any Benefit to the Local Community.

The Coalition agrees with Petitioner that the "registration fee" imposed by Maryland violates the Commerce Clause. The Maryland Statute functions as a tax, not as a user fee, and there is no outside limit to how high such a tax could go. It is discriminatory due to both its disproportionate impact on out-of-state charities, and its sliding-scale fee which is imposed without reference to value obtained from, or expense incurred by, the State.[16] Not only does it fall short of meeting the test set down in Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977), for determining the constitutionality of state-imposed charges on interstate commerce, it also fails to qualify under the "user fee" exception to the Complete Auto Transit test. As Petitioner correctly has pointed out, the holding of the Fourth Circuit essentially "would eviscerate the Commerce Clause's protection against

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[15] Id. at 759. *Accord*, Quill Corp. v. North Dakota, 112 S.Ct. 1904, 1913 note 6 (1992).

[16] Petition for a Writ of Certiorari, at 13-14.

burdensome and discriminatory treatment of interstate commerce."[17]

But even assuming the Maryland statute is determined to be non-discriminatory, it still violates the Commerce Clause if "the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits."[18] It cannot be denied that the burden which would be imposed on charities faced with registration fees in the thousands of jurisdictions into which it mails solicitation materials would be "clearly excessive" in relation to any intangible local benefits these charities may derive from registration. The majority of the States presently have registration fee requirements, and a number of cities and counties have begun regulating charitable solicitations. A decision for the Respondent would effectively give the go-ahead to the thousands of jurisdictions which have yet to impose a registration fee for charitable solicitation, and to those jurisdictions thinking of increasing their registration fees. The cumulative effect of such fees would be crippling to many of the smaller out-of-state charities, and is therefore an unconstitutional burden on interstate commerce.

II. By Deterring the Solicitation of Funds, Regulatory Fees Chill the Dissemination of Constitutionally Protected Speech and Ideas to the Public in Violation of the First Amendment.

A. The Statute Places an Unconstitutional Economic Barrier to the Dissemination of Ideas in Maryland.

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[17] Petition for a Writ of Certiorari, at 17.

[18] Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970); *Accord*, Oregon Waste Systems v. Environmental Dept., 114 S.Ct. 1345 (1994).

Where an organization, such as CAS, has not historically received a high level of contributions from the residents of a State, such as Maryland, a $200 fee may be just enough of a deterrent barrier to dictate that the organization concentrate its solicitation efforts elsewhere (perhaps redoubling its solicitation efforts in a State with no [or a low] fee). New and small organizations that lack the resources to comply with the registration requirements of several jurisdictions are particularly vulnerable to this influence. Ironically, these fees and costs of compliance greatly increase a group's administrative expenses, the relative size of which is a source of criticism of new and small charities; this would give them added reason to avoid such jurisdictions. This is a decision which a charitable organization cannot Constitutionally be required to make.

The act of charitable solicitation has been held to be protected under the First Amendment. Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 632 (1980). Additionally, the actual text, words, ideas and messages contained in the solicitations, in addition to the act of the solicitation, are also protected under the First Amendment. Where the solicitation materials contain constitutionally protected speech (as in CAS's mailings), it may never reach residents in the State of Maryland because of the economic barrier imposed by the State.

It is important to distinguish the call to participate in the democratic process CAS is mailing from the typical "user fee" case in which the communications (about insurance or securities, for example) are commercial in nature. As between political speech and that relating to commercial matters, the former enjoys greater protection under the Constitution.[19]

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[19] *See, e.g.*, Sunstein, Cass, The Partial Constitution, p.238 (1994).

It must be remembered that while in some instances a State's imposition of a "nominal" regulatory fee has been permitted despite First Amendment concerns, notably in cases involving parades[20] and other single event licenses, such cases typically involve an organization which seeks to exercise its rights within the confines of a single State, and the fee imposed is not reflective of that organization's activities (parades, etc.) outside that State. By contrast, the Maryland fee on charitable solicitation affects organizations which can be expected to mail into many jurisdictions, and yet it imposes its fee based on world-wide receipts, which (in CAS's and most other foreign organizations' cases) are derived outside of the State of Maryland.

Further, if one multiplies such "nominal" fees by all 50 States and the thousands of cities, counties, municipalities, and political subdivisions in this country (each of which, if Respondent is correct, would be permitted to impose the highest level fee based on world-wide receipts of an organization received largely outside of its jurisdiction), the figure no longer will appear so "nominal." If jurisdictions place a higher priority on regulating this activity (because they can recover the cost from charitable organizations), there is no limit to the burden that may ultimately be imposed by government on this protected speech. Indeed, the cumulative effect of these rules may be to turn America's free marketplace of ideas into an exclusive boutique where only the largest and best financed organizations can be heard.

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[20] *See, e.g.*, Cox v. New Hampshire, 312 U.S. 569 (1941). Recent "parade" cases recognize the incompatibility between fees that are more than nominal and the free speech guarantee of the First Amendment. Forsyth County, Ga. v. Nationalist Movement, 112 S.Ct. 2395 (1992); Cent. Fla. Nuclear Freeze Campaign v. Walsh, 774 F.2d 1515 (11th Cir. 1985), cert. denied, 475 U.S. 1120 (1986).

B. The Statute Also Unduly Restricts a Wide Range of Organizations Engaged in Political Speech.

CAS is tax exempt pursuant to Section 501(c)(3) of the Internal Revenue Code, a classification which restricts the type of political activity in which the organization may engage.[21] The charitable solicitation laws of Maryland and some other States, however, also apply to other types of organizations which are tax exempt under other sections of the Internal Revenue Code, which do not have this restriction.[22]

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[21] Section 501(c)(3) of the Internal Revenue Code requires, in part, that a qualifying organization "not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

[22] Maryland defines a charitable organization to mean

(1) * * *

(i) a person that:

1. is or holds itself out to be a benevolent, educational, eleemosynary, humane, patriotic, philanthropic, or religious organization; and

2. solicits or receives charitable contributions from the public; or

(ii) an ambulance, fire fighting, fraternal, rescue, or police or other law enforcement organization when it solicits charitable contributions from the public.

(2) "Charitable organization" includes an area, branch, chapter, office, or similar affiliate that solicits charitable contributions from the public within the State for a charitable organization that is organized or has its principal place of business outside the State.

(3) "Charitable organization" does not include:

(i) an agency of the State government or a political subdivision; or

(ii) a political club, committee, or party.

MD Bus. Reg. Code Ann. §6-101(d) (1994).

The Maryland definition of a "charitable organization" differs in scope from that of Section 501(c)(3) of the Internal Revenue Code, and clearly encompasses groups other than those exempt from tax pursuant to Section 501(c)(3). These include for example, Fraternal organizations exempt under Code §501(c)(8) or (10) that routinely lobby legislation on behalf of their members. It might even include social action groups, such as the Coalition, that are exempt under Code §501(c)(4) and may speak to their members and the public about pending legislation, what bills their representatives are backing and how to vote in elections.

Therefore, the imposition of a State's registration fees may directly affect, and possibly deter, organizations involved in the dissemination of political speech, the type of discourse at the heart of the First Amendment. This is clearly the type of law "abridging the freedom of speech" against which the First Amendment was meant to protect.

CONCLUSION

It must be remembered that the fees charged by Maryland (along with those that are or may be imposed by other States and municipalities) will require organizations to decide whether it is economically feasible to solicit in a jurisdiction in light of the fee imposed. Thus the real victims of the Maryland statute are not only the charitable organizations themselves, but those sectors of the public they were organized to serve. *See* Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980); Riley v. National Fed'n. of the Blind, 487 U.S. 781 (1988).

Can there be any question that the cumulative effect of these laws would inhibit free speech activities by charitable organizations? Surely, the power to impose these supposed regulatory fees in these circumstances risks

becoming the power effectively to stifle free speech. It is important, therefore, that the effect of the Maryland statute on free speech activities by charitable organizations not be viewed in isolation.

For the foregoing reasons, the Coalition supports the arguments of the Petitioner that the Court should grant a Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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